

## Nuclear Regulatory Commission

## § 62.24

waste, or any Governor on behalf of any generator or generators located in his or her State, the Commission shall determine whether—

(1) Emergency access to a regional disposal facility or a non-Federal disposal facility within a State that is not a member of a Compact for specific low-level radioactive waste is necessary because of an immediate and serious threat—

(i) To the public health and safety or

(ii) The common defense and security; and

(2) The threat cannot be mitigated by any alternative consistent with the public health and safety, including those identified in § 62.13.

(b) In making a determination under this section, the Commission shall be guided by the criteria set forth in § 62.25 of this part.

(c) A determination under this section must be in writing and contain a full explanation of the facts upon which the determination is based and the reasons for granting or denying the request. An affirmative determination must designate an appropriate non-Federal or regional LLW disposal facility or facilities for the disposal of wastes, specifically describe the low-level radioactive waste as to source, physical and radiological characteristics, and the minimum volume and duration (not to exceed 180 days) necessary to eliminate the immediate threat to public health and safety or the common defense and security. It may also contain conditions upon which the determination is dependent.

### **§ 62.22 Notice of issuance of a determination.**

(a) Upon the issuance of a Commission determination the Secretary of the Commission will notify in writing the following persons of the final determination: The person making the request, the Governor of the State in which the low-level radioactive waste requiring emergency access was generated, the Governor of the State in which the designated disposal facility is located, and if pertinent, the appropriate Compact Commission for such approval as is specified as necessary in section 6(g) of the Act. For the Governor of the State in which the des-

ignated disposal facility is located and for the appropriate Compact Commission, the notification must set forth the reasons that emergency access was granted and specifically describe the low-level radioactive waste as to source, physical and radiological characteristics, and the minimum volume and duration (not to exceed 180 days) necessary to alleviate the immediate and serious threat to public health and safety or the common defense and security. For the Governor of the State in which the low-level waste was generated, the notification must indicate that no extension of emergency access will be granted under § 62.24 of this part absent diligent State and generator action during the period of the initial grant.

(b) The Secretary of the Commission will cause to be published in the FEDERAL REGISTER a notice of the issuance of the determination.

(c) The Secretary of the Commission shall make a copy of the final determination available for inspection at the NRC Web site, <http://www.nrc.gov>.

[54 FR 5420, Feb. 3, 1989, as amended at 64 FR 48954, Sept. 9, 1999]

### **§ 62.23 Determination for granting temporary emergency access.**

(a) The Commission may grant temporary emergency access to an appropriate non-Federal or regional disposal facility or facilities provided that the determination required under § 62.21(a)(1) of this part is made;

(b) The notification procedures under § 62.22 of this part are complied with; and

(c) The temporary emergency access duration will not exceed forty-five (45) days.

### **§ 62.24 Extension of emergency access.**

(a) After the receipt of a request from any generator of low-level waste, or any Governor on behalf of any generator or generators in his or her State, for an extension of emergency access that was initially granted under § 62.21, the Commission shall make an initial determination of whether—

(1) Emergency access continues to be necessary because of an immediate and serious threat to the public health and

safety or the common defense and security;

(2) The threat cannot be mitigated by any alternative that is consistent with public health and safety; and

(3) The generator of low-level waste and the State have diligently though unsuccessfully acted during the period of the initial grant to eliminate the need for emergency access.

(b) After making a determination pursuant to paragraph (a) of this section, the requirements specified in §§ 62.21(c) and 62.22 of this part, must be followed.

**§ 62.25 Criteria for a Commission determination.**

(a) In making the determination required by § 62.21(a) of this part, the Commission will determine whether the circumstances described in the request for emergency access create a serious and immediate threat to the public health and safety or the common defense and security.

(b) In making the determination that a serious and immediate threat exists to the public health and safety, the Commission will consider, notwithstanding the availability of any alternative identified in § 62.13 of this part:

(1) The nature and extent of the radiation hazard that would result from the denial of emergency access, including consideration of—

(i) The standards for radiation protection contained in part 20 of this chapter;

(ii) Any standards governing the release of radioactive materials to the general environment that are applicable to the facility that generated the low level waste; and

(iii) Any other Commission requirements specifically applicable to the facility or activity that is the subject of the emergency access request; and

(2) The extent to which essential services affecting the public health and safety (such as medical, therapeutic, diagnostic, or research activities) will be disrupted by the denial of emergency access.

(c) For purposes of granting temporary emergency access under § 62.23 of this part, the Commission will consider the criteria contained in the Commission's Policy Statement (45 FR

10950, February 24, 1977) for determining whether an event at a facility or activity licensed or otherwise regulated by the Commission is an abnormal occurrence within the purview of section 208 of the Energy Reorganization Act of 1974.

(d) In making the determination that a serious and immediate threat to the common defense and security exists, the Commission will consider, notwithstanding the availability of any alternative identified in § 62.13 of this part:

(1) Whether the activity generating the wastes is necessary to the protection of the common defense and security, and

(2) Whether the lack of access to a disposal site would result in a significant disruption in that activity that would seriously threaten the common defense and security.

The Commission will consider the views of the Department of Defense (DOD) and or the Department of Energy (DOE) regarding the importance of the activities responsible for generating the LLW to the common defense and security, when evaluating requests based all, or in part, on a serious and immediate threat to the common defense and security.

(e) In making the determination required by § 62.21(a)(2) of this part, the Commission will consider whether the person submitting the request—

(1) Has identified and evaluated any alternative that could mitigate the need for emergency access; and

(2) Has considered all pertinent factors in its evaluation of alternatives including state-of-the-art technology and impacts on public health and safety.

(f) In making the determination required by § 62.21(a)(2) of this part, the Commission will consider implementation of an alternative to be unreasonable if:

(1) It adversely affects public health and safety, the environment, or the common defense and security; or

(2) It results in a significant curtailment or cessation of essential services, affecting public health and safety or the common defense and security; or

(3) It is beyond the technical and economic capabilities of the person requesting emergency access; or